

Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-9797
Fax: 571-273-0042

Filed May 4, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

UNIVERSITY OF FLORIDA RESEARCH FOUNDATION INC.
Junior Party
(U.S. Patent 6,500,643 and U.S. Application 10/271,090),

v.

JAPAN SCIENCE AND TECHNOLOGY AGENCY
Senior Party
(U.S. Application 10/069,541).

Patent Interference No. 105,538 (MPT)
(Technology Center 1600)

JUDGMENT - ADVERSE - Bd. R. 127(b)

Before: MEDLEY, TIERNEY, and MOORE *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge*.

MAILED

MAY - 4 2007

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

1 University of Florida Research Foundation ("UOF") was placed under an
2 Order to Show Cause to explain why judgment on priority should not be issued
3 against it. (Paper 9). As explained in the Order to Show Cause, there is a
4 presumption that the parties invented the interfering subject matter in the order of
5 the dates of their accorded benefit. Junior party UOF has failed to challenge this
6 presumption. Specifically, UOF was placed under an Order to Show Cause as

1 UOF failed to file a motions list and informed an Interference Division Paralegal
2 that they would not participate in the initial conference call to discuss motions.

3 The date for responding to the Order to Show Cause was April 19, 2007.
4 Counsel for UOF, Ms. Lisa Hillman, was contacted by an Interference Division
5 Paralegal on April 30, 2007 regarding the Order to Show Cause. UOF stated that
6 they would not be filing a response to the Order to Show Cause.

7 Based upon the facts presented, the Board finds that Junior Party UOF has
8 failed to contest priority on Count 1. UOF's failure to contest priority constitutes
9 an abandonment of the contest and is construed as a request for adverse judgment.
10 37 C.F.R. § 41.127(b)(4).

11
12 It is:

13
14 **Ordered** that judgment on priority as to Count 1, the sole count in
15 interference (Paper 1, p. 4), is awarded against Junior Party UOF.

16 **Further Ordered** that Junior Party UOF is not entitled to a patent containing
17 claims 1-3, 5, and 29 of U.S. Application 10/271,090 and claims 1, 3, 4, 6, 9, and
18 11-23 of U.S. Patent 6,500,643, all of which correspond to Count 1.

19 **FURTHER ORDERED** that a copy of this paper shall be made of record in
20 the files of UOF U.S. Application 10/271,090, UOF U.S. Patent 6,500,643 and
21 Japan Science and Technology Agency U.S. Application 10/069,541.

1 **FURTHER ORDERED** that the parties' attention is directed to 35 U.S.C.
2 §135(c) and Bd. R. 205.

<u>/ss/ Sally C. Medley</u>)	
SALLY C. MEDLEY)	
Administrative Patent Judge)	
)	
)	
<u>/ss/ Michael P. Tierney</u>)	BOARD OF
MICHAEL P. TIERNEY)	PATENT APPEALS
Administrative Patent Judge)	INTERFERENCES
)	
)	
<u>/ss/ James T. Moore</u>)	
JAMES T. MOORE)	
Administrative Patent Judge)	

cc (via overnight delivery):

Attorney for UNIVERSITY OF FLORIDA RESEARCH
FOUNDATION, INC.:

Lisa M.W. Hillman, Ph.D
McDONNELL BOEHNEN HULBERT
& BERGHOFF LLP
300 S. Wacker Drive, 32nd Floor
Chicago, IL 60606

Attorney for JAPAN SCIENCE AND
TECHNOLOGY AGENCY:

Ann S. Hobbs, Ph.D., Esq.
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20007